

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 26, 2016

Elisabeth A. Shumaker  
Clerk of Court

In re: STEVEN ANTHONY FORD,

Movant.

No. 16-2185  
(D.C. Nos. 1:11-CV-00662-JEC &  
1:08-CR-00229-JAP-2)  
(D. N.M.)

ORDER

Before **KELLY, HARTZ**, and **MATHESON**, Circuit Judges.

Movant Steven Anthony Ford, a federal prisoner proceeding through counsel, seeks an order authorizing him to file a second or successive 28 U.S.C. § 2255 motion in the district court so he may assert a claim for relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015).<sup>1</sup> See 28 U.S.C. §§ 2255(h), 2244(b)(3). In 2009, Movant was convicted of a firearms offense in violation of 18 U.S.C. § 922(g). His sentence for that offense was enhanced under the Armed Career Criminal Act (ACCA) based on his having three qualifying prior convictions, see 18 U.S.C. § 924(e)(1), at least one of which was a violent felony. See *United States v. Ford*, 613 F.3d 1263, 1265-66, 1273 (10th Cir. 2010). Movant now seeks to file a § 2255 motion challenging his enhanced sentence based on the Supreme Court’s opinion in *Johnson*, which invalidated the residual clause in the ACCA’s definition of “violent felony” as unconstitutionally vague.

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<sup>1</sup> Pursuant to 18 U.S.C. § 3006A, Ryan Joseph Ricardo Villa is appointed as counsel for Steven Anthony Ford effective nunc pro tunc to the date the request for authorization to file a second or successive § 2255 motion was filed in this court.

To obtain authorization, Movant must make a prima facie showing that his claim meets the gatekeeping requirements of § 2255(h). *See* 28 U.S.C. § 2244(b)(3)(C). Relevant here is the requirement that the claim rely on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable,” 28 U.S.C. § 2255(h)(2). Based on the information before us, we conclude that the Movant has made the required showing. *Johnson* announced a new rule of constitutional law, and the Supreme Court made *Johnson* retroactive to cases on collateral review in *Welch v. United States*, 136 S. Ct. 1257, 1265 (2016).

The motion for authorization filed in this court on July 26, 2016, is granted. Movant is authorized to file in the district court a second-or-successive § 2255 motion raising his *Johnson* claim and any claims related to the timeliness of the now-authorized successive § 2255 motion.<sup>2</sup>

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal line.

ELISABETH A. SHUMAKER, Clerk

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<sup>2</sup> We note that counsel was appointed by the district court to represent movant on July 7, 2016.